

**LEMON GROVE CITY COUNCIL  
AGENDA ITEM SUMMARY**

**Item No.** 1.F  
**Mtg. Date** September 1, 2015  
**Dept.** Development Services

**Item Title:** **Third Amendment to the National Pollutant Discharge Elimination System  
Regional Storm Water Copermittee Memorandum of Understanding**

**Staff Contact:** Malik Tamimi, Management Analyst

**Recommendation:**

Adopt a resolution (**Attachment B**) approving the Third Amendment of the National Pollutant Discharge Elimination System Regional Storm Water Copermittee Memorandum of Understanding (**Attachment C**).

**Item Summary:**

The San Diego Regional Water Quality Control Board Order R9-2013-0001 (Permit) requires agencies work together to implement watershed and regional storm water management programs. Copermittees, including the City of Lemon Grove, adopted the Regional Memorandum of Understanding (MOU) on November 16, 2007 and changes are necessary to reflect the 2013 Permit requirements. This third amendment continues cost sharing obligations for regional and watershed programs required by the 2013 Permit. The Third Amendment to the Regional MOU will remain effective through August 2019 or the life of the current Permit plus 12 months, whichever is longer. The staff report provides additional details on the proposed MOU.

**Fiscal Impact:**

This Regional MOU establishes a not to exceed limit through FY 2019 of \$4,583,197 for Regional General Programs and \$4,084,000 for San Diego Bay Watershed Program. The City's share is 1.01 percent (\$11,573 average per year over four years) of the Regional Cost Share and 3.09 percent (\$31,549 average per year over four years) of the San Diego Bay Watershed. The aforementioned average cost share is consistent with the Second Amendment of the MOU. It is worth noting that there is a slight decrease in the cost share under the Third Amendment compared to FY 2014-15.

**Environmental Review:**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review     | <input type="checkbox"/> Negative Declaration           |
| <input type="checkbox"/> Categorical Exemption, Section 15301 | <input type="checkbox"/> Mitigated Negative Declaration |

**Public Information:**

- |  |   |   |
|--|---|---|
| <input checked="" type="checkbox"/> None                     | <input type="checkbox"/> Newsletter article   | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting |   |

**Attachments:**

- A. Staff Report
- B. Resolution
- C. Third Amendment to the MOU

# Attachment A

## LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 1.F

Mtg. Date September 1, 2015

Item Title: **Third Amendment to the National Pollutant Discharge Elimination System  
Regional Storm Water Copermittee Memorandum of Understanding**

Staff Contact: **Malik Tamimi, Management Analyst**

### Discussion:

The Storm Water Permit issued by the San Diego Regional Water Quality Control Board requires a Regional Memorandum of Understanding (MOU) among the permitted agencies to meet watershed and regional obligations. The 21 permitted agencies under the Storm Water Permit are collectively called Copermittees, which includes the City of Lemon Grove.

The purpose of the Regional MOU is to establish shared program obligations for each Copermittee. The Regional MOU establishes regional working bodies and watershed working groups that develop and implement work products to meet the Storm Water Permit requirements in Order R9-2013-0001.

The most significant changes to the MOU include the applicability of the Brown Act to various working groups. The applicability of the Brown Act to Copermittee working group has been defined and ensures compliance with the Act. Other changes include:

- Identification of the County of San Diego as the Regional Principal Copermittee, and
- Reassignment of a Regional Principal Copermittee or responsibilities requires three-fourths majority vote in place of a unanimous vote, and
- Inclusion of a not to exceed cost for Regional General Programs and Watershed Programs through FY 2019.

Annual spending per fiscal year is presented in Table 1 of the MOU (**Attachment C**), establishing the cost share obligations to implement the various storm water programs. The Copermittees reached consensus during the Second Amendment to the MOU to include a “not to exceed” budget for FY 2014-15. The Third Amendment presents proposed budgets through FY 2019. The total cumulative not to exceed cost over the next four fiscal years presented in Table 1 of the MOU (Attachment C) is \$4,583,197 for Regional General Programs and \$4,084,000 for San Diego Bay Watershed Program. The City’s share is 1.01 percent (\$11,573 average per year) of the Regional Cost Share and 3.09 percent (\$31,549 average per year) of the San Diego Bay Watershed for a total maximum average of \$43,122.

The cumulative cost share proposed in the Third Amendment on average per fiscal year is consistent with costs presented and expended under the Second Amendment to the MOU. In fact the proposed cost on average per fiscal year in the Third Amendment is less than the cost expended during FY 2014-15 under the Second Amendment to the MOU and the San Diego Bay Watershed Program total of \$48,788.

The approval of this Third Amendment of the Regional MOU will allow for continued collaboration and cost sharing among Copermittees through August 2019 or through the life of the current Storm Water Permit plus 12 months, whichever is longer.

# Attachment A

## **Conclusion:**

Staff recommends that the City Council adopt a resolution (**Attachment B**) approving the Third Amendment of the National Pollutant Discharge Elimination System Regional Storm Water Copermittee MOU (**Attachment C**)

.

## Attachment B

**RESOLUTION NO. 2015-  
RESOLUTION OF THE LEMON GROVE CITY COUNCIL APPROVING THE THIRD  
AMENDMENT TO THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
REGIONAL STORM WATER COPERMITTEE MEMORANDUM OF UNDERSTANDING**

---

**WHEREAS**, on, May 8, 2013, the Regional Water Quality Control Board issued a National Pollution Discharge Elimination System Permit Order No. R9-2013-0001 (Permit); and

**WHEREAS**, the Permit was issued to the County of San Diego, the San Diego Unified Port District (Port), the San Diego County Regional Airport Authority (Airport), and the incorporated cities of San Diego County including the City of Lemon Grove, collectively called Copermittees; and

**WHEREAS**, the Permit requires agencies to work together to implement watershed and regional storm water management programs; and

**WHEREAS**, the Copermittees developed a Regional Memorandum of Understanding (MOU) to establish shared program responsibilities including program implementation costs; and

**WHEREAS**, the Third Amendment to the Regional MOU was necessary to meet the new Permit requirements; and

**WHEREAS**, the City supports the amendments made to the Third Amendment to the Regional MOU; and

**NOW, THEREFORE, BE IT RESOLVED** that the Lemon Grove City Council hereby approves the amendments to the Regional MOU and authorizes the City Manager to sign the Third Amendment to the National Pollutant Discharge Elimination System Regional Storm Water Copermittee MOU.

////

////



### **Third Amendment to National Pollutant Discharge Elimination System**

#### **San Diego Regional Stormwater Copermittees**

## **MEMORANDUM OF UNDERSTANDING**

**July 2, 2015**

This Memorandum of Understanding (MOU), entered into by the County of San Diego (County), the San Diego Unified Port District (Port), the San Diego County Regional Airport Authority (Airport), and the incorporated cities of San Diego, Carlsbad, Chula Vista, Coronado, Escondido, Imperial Beach, La Mesa, San Marcos, Del Mar, El Cajon, Encinitas, Lemon Grove, National City, Oceanside, Poway, Santee, Solana Beach, and Vista (Cities), collectively called Copermittees, establishes the shared program responsibilities of each party with respect to compliance with the National Pollutant Discharge Elimination System (NPDES) stormwater permit regulations administered by the United States Environmental Protection Agency (U.S. EPA) under the authority granted by the Federal Water Pollution Control Act (Clean Water Act) 33 USCA 1251 et seq. as amended.

### **RECITALS**

WHEREAS, in 1987 Congress amended Section 402 of the Federal Water Pollution Control Act (33 USCA §1342p) to require the U.S. EPA to promulgate regulations for applications for permits for stormwater discharges; and

WHEREAS, the U.S. EPA adopted final permit regulations on November 16, 1990; and

WHEREAS, these permit regulations require the control of pollutants from stormwater discharges by requiring an NPDES permit, which would allow the lawful discharge of stormwater into waters of the United States; and

WHEREAS, the County, the Port, the Airport, and the Cities desire to implement an integrated stormwater management program with the objective of improving surface water quality in the County of San Diego, but do so without waiving and expressly subject to any and all objections and appeals made by any Copermittee in response to any NPDES Permit; and

WHEREAS, the California State Water Resources Control Board (CSWRCB) as designee of the U.S. EPA has delegated authority to the San Diego Regional Water Quality Control Board (Regional Board) for administration of the NPDES stormwater permit within the boundaries of its region; and

WHEREAS, on, May 8, 2013, the Regional Board issued an NPDES permit as Order No. R9-2013-0001 (Permit) governing waste discharge requirements for stormwater and urban runoff from the County, the Port, the Airport, and the Cities, naming these entities as Copermittees; and

WHEREAS, said Permit requires that the Copermittees cooperate in the implementation of various Urban Runoff Management Plans;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

# Attachment C

## I. DEFINITIONS

**At Large** means representing all of the Copermittees of this MOU.

**Chair** means presiding over and providing leadership and direction to a Working Body. This includes serving as a point of contact to external entities such as Regional Board staff, stakeholders, and industry groups, soliciting group input on and developing meeting content, facilitating meetings, and coordinating with the Secretary or Working Body Support staff to finalize work products for distribution to the Working Body. Chair responsibilities may also be divided between Co-Chairs.

**Contract Administration** means developing, soliciting, awarding, and managing contracts.

**Consensus** means general agreement reached between the participants of a Working Body.

**Direct Costs** mean those costs directly related to the development of a work product, or to the performance of a particular function or service. Direct Costs may include the wages of Copermittee employees engaged in an activity and the cost of materials or supplies needed to support that activity. Depreciation, equipment, and office space are not considered Direct Costs.

**Fiscal Year** starts on July 1 and ends on June 30 of the following year.

**General Programs** are collaborative urban runoff management activities which are (1) mandated by or necessary to implement requirements of the Permit, (2) necessary to anticipate the requirements, or prepare for renewal, of the Permit, (3) required to comply with Regional Board Orders or other directives required of Copermittees as dischargers of urban runoff (e.g., 13267 Orders, Total Maximum Daily Loads, etc.), or (4) other urban runoff management activities conducted with the unanimous approval of Copermittees sharing the cost or responsibility.

**In-kind Contribution** means a non-monetary contribution that can be used to satisfy an equivalent monetary obligation. Examples of In-kind Contributions are equipment or services provided for use.

**Program Planning Subcommittee** is composed as described in Section III.C.4 and 5.

**Regional General Programs** are activities that apply to all Copermittees, or that provide a regional benefit to Copermittees as determined by the Regional Management Committee.

**Regional Principal Permittee** is the County of San Diego unless another Regional Principal Permittee is selected in accordance with Section III.B.5. In addition to the responsibilities of all Copermittees described in Section II, the Regional Principal Permittee provides general coordination for the development and implementation of Regional General Programs, including the specific tasks and responsibilities described in Section III.A.1.b.

**Regional Stormwater Management Committee or Management Committee** is composed as described in Section III.B.2.

**Representative** means a Copermittee staff member or consultant who serves as a point of contact and/or participant in the activities of a Working Body on behalf of the Copermittee. Except as described in Section III.B (Regional Stormwater Management Committee), Representatives are not required to attend meetings, but are expected to maintain a reasonable knowledge of, and involvement in, the activities of the Working Body. To the best of their ability each Copermittee Representative should have expertise and knowledge in the subject matter of each applicable Working Body.

**Secretary** means a person who takes responsibility for the records, correspondence, minutes or notes of meetings, and related affairs of a Working Body. This includes: maintaining group contact lists; preparing and sending out meeting notifications and agendas; arranging for meeting rooms and equipment; taking, preparing, and finalizing meeting minutes or notes; and, coordinating with the Chair or Working Body Support staff to organize and distribute work products to the Working Body.



# Attachment C

**Simple Majority** means at least one-half (50%) of applicable Copermittees, rounded up to the nearest integer, or plus one where the number of Copermittees is even. For the purposes of this MOU, a simple majority may never be less than three Copermittees.

**Special Formula** means any cost share formula that differs from the Default Formula in the selection or weighting of individual factors or in the methodology used to calculate one or more of them.

**Three-fourths Majority** means at least three-fourths (75%) of applicable Copermittees, rounded up to the nearest integer. For the purposes of this MOU, a Three-fourths Majority may never be less than three Copermittees.

**Two-thirds Majority** means at least two-thirds (67%) of applicable Copermittees, rounded up to the nearest integer. For the purposes of this MOU, a Two-thirds Majority may never be less than three Copermittees.

**Urbanized Land Area** means the total of all SANDAG land uses within the geographic area, subject to the cost share, excepting therefrom, the following coded land uses: 1403 Military Barracks; 4102 Military Airports; 6700 Military Use; 6701 Military Use; 6702 Military Training; 6703 Military Weapons; 7209 Casinos; 7603 Open Space Reserves, Preserves; 7609 Undevelopable Natural Areas; 9200 Water; 9201 Bays, Lagoons; 9202 Inland Water; and 9300 Indian Reservations.

**Watershed Copermittee** means any Copermittee that is identified both as a Copermittee under Table 1.a and a Responsible Copermittee under any Watershed Management Area as defined in Table B-1 of the Permit.

**Watershed General Programs** are activities that apply to the Copermittees comprising any individual Watershed Management Area (WMA) defined in Table B-1 of the Permit, or providing a general benefit to Copermittees within the WMA as determined by a Watershed Workgroup.

**Working Body** means Committees, Subcommittees, Workgroups, Sub-workgroups, or any other group of Copermittees' employees assembled to conduct specific tasks required by, for, or in furtherance of, compliance with the Permit.

**Working Body Support** means those tasks associated with carrying out the responsibilities of the Working Body. This includes researching, drafting, modifying, and finalizing work products such as work plans, budgets, and meeting materials. Working Body Support does not include chairing or co-chairing meetings or tasks that are equitably divided amongst the Representatives of the Working Body. Working Body Support tasks are reimbursable, and may be contracted by any participating Copermittee.

## II. RESPONSIBILITIES OF ALL COPERMITTEES

The following apply to General Programs.

### A. Performance and Reimbursement of Tasks

1. Any individual Copermittee performing tasks necessary to fulfill budgeted General Program responsibilities for a Working Body is entitled to reimbursement of the costs incurred in accordance with section II.B.
2. Any Copermittee performing contract administration tasks to fulfill budgeted General Program responsibilities for a Working Body is entitled to reimbursement of contract management costs at a rate of 5% of the total contract cost or as otherwise agreed on by the participating Copermittees.
3. Any Copermittee performing tasks other than contract administration or voluntarily serving as a Working Body Chair, Co-chair, or Secretary, is entitled to reimbursement of the Direct Costs of performing those services in accordance with section II.B.

# Attachment C

4. A Copermittee shall not be obliged to conduct work, enter into any contract, continue with any work or contract, or incur any other cost on behalf of other Copermittees if each Copermittee has not contributed the funds that it is obliged to contribute toward the activity or program, or if the Copermittee has not received adequate assurances that such funds will be received before payments become due. The Copermittee shall have sole discretion to determine whether assurances that require funds will be timely received or adequate.
5. A member of a Working Body providing Working Body Support may terminate those obligations for convenience, but shall first make a good faith effort to carry out or transfer existing responsibilities to another party.

## B. Fiscal Responsibilities

1. Division of Shared General Program Costs
  - a. Prior to the allocation of shared costs, each proposed or approved budget task or sub-task shall be identified as either a Regional General Program cost or a Watershed General Program cost, and the Copermittees sharing that cost shall be identified. The cost of any particular budget element shall be subject to the approval of only the Copermittees to which it applies. The associated costs shall be divided among participating Copermittees as described below.
    - (1) Default Formula. Shared costs shall be divided according to a Default Formula of 45% Urbanized Land Area, 45% Population, and 10% Equal Division unless a Special Formula is approved by the Copermittees to which the cost applies.
      - (a) Population costs shall be divided among the Copermittees as follows: Whenever any geographic portion of the Port or Airport jurisdiction(s), respectively, lies(s) within the geographic area to which the shared program or activity is applicable, the Port or Airport, respectively, will each pay a fixed 0.5% of total Population costs. The remaining percentage of the population costs shall be divided among Copermittees by dividing the total population of each Copermittee by the combined total Copermittee population within the geographic area applicable to the shared program or activity. These percentages shall be calculated using the most recently available population data available from the San Diego Association of Governments (SANDAG), unless more recent data are available from an equivalent source such as the U.S. Census Bureau, and are determined to be acceptable by the Copermittees sharing the cost.
      - (b) Urbanized Land Area costs shall be divided among Copermittees by dividing the total Urbanized Land Area of each Copermittee by the combined total Urbanized Land Area of all participating Copermittees within the geographic area applicable to the shared program or activity. Urbanized Land Area shares shall be calculated using the most recently available San Diego Association of Governments (SANDAG) land use statistics. The Urbanized Land Area share for the County shall include those urbanized lands in the unincorporated portion of the County that are west of the County Water Authority (CWA) service area boundary as it exists on the date of this MOU or as formally amended by the CWA.
      - (c) Ten Percent (10%) of the total cost to be shared shall be divided equally amongst all of the Copermittees.

## Attachment C

- (d) Modification of the Default Formula requires the unanimous vote of all Copermittees. For cost sharing that applies only to a group that contains fewer than all Copermittees, a unanimous vote is required of all affected Copermittees.

- (2) Special Formulas.

Special Formulas may be applied to any shared Regional or Watershed General Program cost, and require the unanimous vote of the Copermittees participating in the cost.

- (3) In-kind Contributions. Subject to approval by the Copermittees participating in a particular shared General Program budget, a Copermittee may provide an in-kind contribution of equal value rather than a monetary contribution toward all or part of the cost of an activity. Copermittee in-kind contributions may include Working Body Support.

### 2. Work Plans and Shared Cost Budgets

- a. Limitations on Cost-sharing

General Program activities that may be cost-shared by the Copermittees include collaborative urban runoff management activities which are (1) mandated by or necessary to implement requirements of the Permit, (2) necessary to anticipate the requirements, or prepare for renewal, of the Permit, (3) required to comply with Regional Board Orders or other directives required of Copermittees as dischargers of urban runoff (e.g., 13267 Orders, Total Maximum Daily Loads, etc.), or (4) other urban runoff management activities conducted with the unanimous approval of Copermittees sharing the cost or responsibility.

Examples of such activities include:

- (1) Development or implementation of any program requirements of the MS4 Permit, such as, the BMP Design Manual, regional education and outreach, or Water Quality Improvement Plans;
- (2) Public participation activities, such as facilitating public meetings and workshops;
- (3) Program assessment;
- (4) Plan updates;
- (5) Water quality monitoring, assessment and reporting;
- (6) Annual reporting, including establishment and management of data and information clearinghouses;
- (7) Preparation of technical analyses, recommendations and comments regarding the MS4 Permit, total maximum daily loads, and other relevant storm water quality regulations;
- (8) Preparation of documents required by the MS4 Permit, such as Reports of Waste Discharge; and
- (9) Special studies related to storm water quality-related pollutants, their sources, and potential best management practices.

# Attachment C

## b. Regional Work Plans and Shared Cost Budgets

1. No later than October 31<sup>st</sup> of each year, each Regional Working Body shall prepare and submit to the Planning Subcommittee a Work Plan and Shared Costs Budget for the upcoming Fiscal Year.
2. Each Work Plan shall identify the parties that will serve as a Working Body Chair, Co-chair, or Secretary for the upcoming Fiscal Year. These assignments will be served on a fiscal year basis, and shall be for a minimum term of one year.
3. A Copermittee may not be compelled to act, or continue acting, as a Working Body Chair, Co-chair, or Secretary, and may at any time terminate an existing assignment. Before doing so, the Copermittee shall first make a good faith effort to carry out or transfer existing responsibilities.
4. Each budget shall describe major tasks, schedules, and projected costs, which Copermittees will provide Working Body Support, Contract Administration, in-kind contributions, and any other information applicable to regional general program costs.
5. To ensure that each Copermittee governing body has sufficient time to consider fiscal impacts, the Planning Subcommittee shall prepare a consolidated draft Regional Work Plan and Shared Costs Budget no later than December 31<sup>st</sup> of each year for the regional general programs. After consideration of comments and discussion, a final Regional Work Plan and Shared Costs Budget shall be prepared, approved by the Management Committee, and distributed to the Copermittees no later than January 31<sup>st</sup> of each year. The consolidated Regional Work Plan and Shared Costs Budget shall also identify the party or parties serving as Regional General Program operations fund managers.
6. Modifications to any adopted Regional Work Plan and Shared Costs Budget that will result in an overall increase in cost require the approval of the Regional Management Committee.

## c. Watershed Work Plans and Shared Cost Budgets

1. Each Watershed Workgroup, for which costs will be shared, shall prepare, adopt, and distribute to the participating Copermittees a Watershed Work Plan and Shared Costs Budget.
2. Each Watershed Work Plan and Shared Costs Budget shall include a description of major tasks, schedules, and projected costs, and shall identify the Copermittees that will provide or contract services or incur other costs. It shall also identify the party or parties serving as Watershed General Program operations fund managers.
3. Modifications to any adopted Watershed Shared Costs Budget and Work Plan that will result in an overall increase in cost require the unanimous approval of the applicable Copermittees.

## 3. Cumulative Budget Limits

- a. The total Shared Cost Budget authorized under this MOU may not exceed the Cumulative Limits specified for each spending category in **Table 1**. These values represent the maximum amount that may be cost-shared for each spending category for the duration of this MOU. They do not represent funding commitments. Once a Cumulative Limit has been reached, the Copermittees must establish separate agreements for sharing additional costs for that budget category. The estimated annual limits shown for each fiscal year are for planning purposes only. Where an estimated annual limit is not reached in any fiscal year, the surplus amount may be carried over into subsequent

## Attachment C

fiscal years, so long as the Cumulative Limit is not exceeded. Budget limits apply only to their designated budget category. They may not be exchanged or credited across budget categories. Spending in each budget category may not exceed the applicable Cumulative Limit under any circumstances.

**Table 1: Not-to-exceed Limits by Budget Category**

Budget Category	Estimated Annual Spending Limits				Cumulative Limit
	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	
<b>1. Regional General Programs</b>	\$1,782,597	\$900,200	\$1,000,200	\$900,200	\$4,583,197
<b>2. Watershed General Programs</b>					
a) San Luis Rey WMA	\$779,025	\$823,550	\$697,091	\$975,456	\$3,275,122
b) San Dieguito WMA	\$337,944	\$854,136	\$340,950	\$545,203	\$2,078,233
c) Los Penasquitos WMA	\$744,313	\$804,510	\$561,095	\$680,663	\$2,790,581
d) San Diego River WMA	\$1,151,733	\$742,219	\$574,802	\$800,161	\$3,268,915
e) San Diego Bay WMA	\$1,260,000	\$862,000	\$1,038,000	\$924,000	\$4,084,000
f) Tijuana River WMA	\$400,000	\$450,000	\$320,000	\$375,000	\$1,545,000
<b>3. Total Not-to-exceed Amount</b>	\$6,485,612	\$5,436,615	\$4,532,138	\$5,200,683	\$21,625,048

#### 4. Management and Payment of Funds

- a. For Regional General Programs, the Copermittees shall each pay a yearly assessment into one or more Regional General Program operations funds for their respective portion of any Regional Shared Costs Budget approved pursuant to this MOU. The Regional General Program operations fund shall be managed by the Regional Principal Permittee, or any other Permittee on approval of the Copermittees.
- b. For Watershed General Programs, the applicable Watershed Copermittees shall each pay an assessment into one or more Watershed General Program operations funds for their assigned portion of any Watershed Shared Costs Budget approved pursuant to this MOU. Each Watershed General Program operations fund shall be managed by the Watershed Lead Permittee, or any other Watershed Permittee on approval of the participating Copermittees.
- c. The Copermittee managing each General Program operations fund shall provide Budget Balance and Expenditure Status Reports following the end of each fiscal year. This shall include a detailed accounting of all costs and expenses in accordance with the adopted Work Plan and Shared Costs Budget, including those incurred by Copermittees providing Working Body Support, contracting services, in-kind services, or other applicable costs.
- d. Each Copermittee shall pay invoices within 60 days of receipt from the Copermittee managing the applicable General Program operations fund.

## Attachment C

- e. Funds collected and not expended in any fiscal year shall be credited to the Copermittees' share of the next fiscal year's costs in accordance with the Copermittees' defined shared costs.
- f. Copermittees providing Working Body Support, Contract Administration, in-kind services, or incurring other budgeted costs on behalf of other Copermittees shall provide documentation of those expenses as requested by the Copermittee managing the applicable General Program operations fund. They shall only receive credit for those expenses if a detailed accounting of all costs and expenses meeting the minimum standards agreed upon by the Copermittees has been provided.
- g. Differences in the approved actual cost of expenses from those budgeted shall be either credited or added as appropriate to the amount of the Copermittee's share. In the event that any Copermittees' share of the next fiscal year's costs is less than the amount to be credited, the difference shall be refunded to the Copermittee. Refunds shall be provided to Copermittees no later than 90 days after final accounting.
- h. At its discretion, a Copermittee managing a General Program operations fund may, prior to the completion of a fiscal year, make payment to any Copermittee providing Working Body Support, Contract Administration, in-kind services, or incurring other budgeted expenditures on behalf of other Copermittees so long as all of the conditions of Section II B.4.f above have been satisfied and there are sufficient funds available to make a payment without requiring additional contributions or jeopardizing program objectives. If for some reason excess payment is made, the Copermittee receiving the payment agrees to return the additional payment without any recourse against the managing Copermittee.

### III. REGIONAL GENERAL PROGRAMS

In addition to the requirements of Section II, the following apply to Regional General Programs.

#### A. Regional Principal Permittee

- 1. The County is hereby designated Regional Principal Permittee (Principal Permittee).
  - a. The County or any other Copermittee may not be compelled to act, or continue acting, as Principal Permittee. A Copermittee may at any time terminate its assignment as Principal Permittee, but shall first make a good faith effort to carry out or transfer existing responsibilities.
  - b. In addition to the responsibilities of all Copermittees described in Section II, the Principal Permittee shall provide general coordination for the development and implementation of Regional General Programs, including the following tasks and responsibilities:
    - (1) Establish, chair, and provide overall coordination and leadership of the Regional Stormwater Management Committee (Management Committee) and the Regional Program Planning Subcommittee (Planning Subcommittee).
    - (2) Maintain a current contact list of Copermittees and interested parties.
    - (3) Maintain knowledge of and advise the Copermittees regarding current and proposed state and federal policies, regulations, and other NPDES programs; assist the Copermittees in the development and presentation of positions on these issues before local, state, and federal agencies.

## **B. Regional Stormwater Management Committee**

1. The purpose of the Regional Stormwater Management Committee (Management Committee) is to provide a public forum for the development, approval, and coordination of urban runoff management programs, and for the exploration of issues of regional significance.
2. The Management Committee shall consist of one Representative of each Copermittee. Each Copermittee shall have one vote.
3. The Management Committee shall meet at least annually.
4. At a minimum, the Management Committee shall have the following responsibilities:
  - a. Address common issues, promote consistency among jurisdictional and watershed programs, and plan and coordinate activities required under the Permit;
  - b. Develop, implement, and arrange for implementation of Regional General Programs;
  - c. Provide a general forum for informing and receiving input from stakeholders and interested parties;
  - d. Provide a forum for public participation in the development and implementation of regional urban runoff management programs and activities;
  - e. Establish or modify Working Bodies to review specific issues, make recommendations, or conduct work in support of shared regional priorities or objectives;
  - f. Formally approve the recommendations, work products, and deliverables of Working Bodies presented for consideration;
  - g. Adopt an Annual Regional Work Plan and Shared Costs Budget in accordance with the budgetary limits set forth in Table 1;
  - h. Approve an Annual Regional Work Plan and Shared Costs Budget; and
  - i. Approve year-end Budget Balance and Expenditure Status Reports.
5. The Management Committee shall be chaired by the Principal Permittee, or may alternatively be chaired or co-chaired by any other Copermittee. A reassignment or change in the responsibilities of the Principal Permittee requires a three-fourths majority approval of all Copermittees.
6. Voting Requirements for the Management Committee
  - a. For a meeting or a vote to be held, a quorum of a Two-thirds Majority of voting representatives of the Management Committee must either be present or participate remotely via legally acceptable electronic communication (telephone, voice over internet protocol, etc.).
  - b. Management Committee voting shall not be conducted outside of meetings (e.g., by email).
  - c. For a motion to be approved, an affirmative vote of a Simple Majority of the Management Committee is needed.
  - d. On approval of the Management Committee, activities undertaken by a subset of Copermittees, but providing a regional benefit to Copermittees, may be considered Regional General Programs.
  - e. Approval of any shared cost requires a unanimous vote of all Copermittees participating in the cost.
7. Meetings of the Management Committee, including any closed sessions with legal counsel, shall be conducted in accordance with the "Brown Act" (Government Code Section 54950 et seq.). Except for official meetings of the Management Committee, nothing herein shall be interpreted to

# Attachment C

require meetings between staff members of the individual Copermittees (including designated representatives of the Copermittees) to be subject to the Brown Act, where the Brown Act would not otherwise apply.

## C. Regional Program Planning Subcommittee

1. The purposes of the Regional Program Planning Subcommittee (Planning Subcommittee) shall be to provide regional coordination of urban runoff management activities, to develop and implement Regional General Programs, and to coordinate the activities of Working Bodies.
2. At a minimum, the Planning Subcommittee shall have the following responsibilities:
  - a. Serve as an intermediary between the Management Committee and other Copermittee Working Bodies;
  - b. Plan and coordinate Management Committee meetings;
  - c. Establish or modify Regional Workgroups to review specific issues, make recommendations, or conduct work in support of shared regional priorities or objectives;
  - d. Oversee, coordinate, and track the progress of As-Needed Regional Workgroups in developing specific work products, responding to information requests, and completing tasks;
  - e. Establish and maintain a calendar of Copermittee meetings and events;
  - f. Conduct regional program planning including developing an Annual Regional Work Plan and Shared Costs Budget for Management Committee consideration and approval;
  - g. Review and recommend Management Committee approval of work products, recommendations, and requests of Regional Workgroups for consideration and approval;
  - h. Annually receive, review, comment on, and consolidate the recommended Work Plans and Shared Costs Budgets of each Regional Workgroup;
  - i. Coordinate and liaise with Regional Board staff, stakeholders, regulated parties, and other interested parties to identify and explore key regional issues and concerns.
  - j. Provide Representation to the California Stormwater Quality Association (CASQA);
  - k. Provide representation or participation for other professional organizations and societies as appropriate and feasible;
  - l. Provide regular updates to Copermittees and interested parties via Management Committee meetings or other appropriate means (e-mail, etc.); and
  - m. Provide subject area input as needed for the development, implementation, review, and revision of General Programs, and the development of associated reports and work products.
3. The Planning Subcommittee shall be chaired by the Principal Permittee, or may alternatively be chaired or co-chaired by any other Copermittee upon approval of the Management Committee.
4. Planning Subcommittee meetings shall be open to all Copermittees; however, voting membership in any year shall be limited to one representative of each Watershed Management Area (WMA) listed in Permit Table a.1 except the South Orange County WMA. Any Copermittee may only represent one WMA. For each fiscal year, each WMA will designate a Copermittee as a voting member of the Planning Subcommittee prior to the beginning of that fiscal year. Each WMA may also designate an alternate voting member.
5. Each voting member shall be considered an at-large member. Their purpose is to represent the interests of all Copermittees of this MOU rather than those of their specific WMAs.
6. The Planning Subcommittee may not alter the responsibilities of, or impose new fiscal obligations on, any Copermittee or Working Body, except as approved by the Management Committee.



## Attachment C

However, the Planning Subcommittee may approve changes to approved Annual Regional Work Plans and Shared Costs Budgets within approved annual budget limits.

7. Voting Requirements for the Planning Subcommittee:
  - a. The Planning Subcommittee shall only make advisory recommendations for items requiring Management Committee approval.
  - b. The Planning Subcommittee may use any voting methodology it deems appropriate to develop advisory recommendations or conduct other business, and, shall present minority or dissenting recommendations for consideration by the Management Committee as applicable.
  - c. Except as prohibited by law, the Planning Subcommittee may conduct votes outside of meetings (e.g., by e-mail) as appropriate.
8. Meetings of the Planning Subcommittee, including any closed sessions with legal counsel, shall be conducted in accordance with the “Brown Act” (Government Code Section 54950 et seq.). Except for official meetings of the Planning Subcommittee, nothing herein shall be interpreted to require meetings between staff members of the individual Copermittees (including designated representatives of the Copermittees) to be subject to the Brown Act, where the Brown Act would not otherwise apply.

### **D. Regional Workgroups**

1. The purpose of Regional Workgroups is to provide staffing and perform tasks and develop work products requested by the Regional Management Committee or the Regional Program Planning Subcommittee, and provide related coordination of activities and work products with stakeholders and interested parties. Regional Workgroups are advisory to the Management Committee through the Planning Subcommittee.
2. Copermittee participation on Regional Workgroups is voluntary.
3. No minimum meeting frequency is required. The Regional Workgroups shall meet as necessary to coordinate the performance of specified work products as staff to implement the Permit.
4. At a minimum, each Regional Workgroup shall have the following responsibilities:
  - a. Facilitate consistency in the development, implementation, review, and revision of General Programs, and develop associated reports and work products.
  - b. By October 31st of each year, prepare and submit to the Planning Subcommittee a recommended Work Plan for the activities of the Workgroup in the ensuing fiscal year. This shall include a description of major tasks, deliverables, and projected schedules, and the assignment and/or division of responsibilities for task completion.
  - c. Provide subject area input to other Regional Workgroups as needed.  
As necessary, coordinate and liaise with Regional Board staff, stakeholders, regulated parties, and other interested parties regarding applicable tasks.
5. Voting Requirements for Regional Workgroups
  - a. Regional Workgroups shall make consensus support staff recommendations to the Planning Subcommittee, who shall in turn make recommendations for formal votes to the Management Committee.
  - b. Regional Workgroups may use any voting methodology they deem appropriate to develop consensus, and, as applicable, shall present minority or dissenting recommendations for consideration.

# Attachment C

- c. Regional Workgroups may conduct votes outside of meetings (e.g., by email) as appropriate.

## IV. WATERSHED GENERAL PROGRAMS

The following apply to Watershed General Programs.

### A. Watershed Workgroups

1. The purpose of Watershed Workgroups is to allow Copermittees within a Watershed Management Area to share costs for watershed activities and programs. Watershed Workgroups may use this MOU to share costs for convenience, but are not required to do so.
2. No action is required for the Copermittees within a Watershed Management Area to establish a Watershed Workgroup.
3. Watershed Workgroups may share costs as part of this MOU up to the cumulative limits identified in Table 1. These values represent the maximum amount that may be cost-shared by a Watershed Workgroup for the duration of this MOU. They do not represent funding commitments. Once a cumulative limit has been reached, the Watershed Copermittees must establish separate agreements for sharing additional costs. Costs that may be shared by Watershed Workgroups are identified in section II.B.2.a.
4. Management and payment of funds by Watershed Workgroups shall be conducted in accordance with the requirements of section II.B.4. Any Watershed Copermittee may manage a Watershed General Program operations fund.
5. No minimum meeting frequency is required for any Watershed Workgroup. The Watershed Workgroups shall meet as necessary to coordinate the performance of specified work tasks as staff to implement the Permit.
6. On approval of the Watershed Workgroup, activities undertaken by a subset of Watershed Copermittees, but providing a general benefit to Copermittees within the WMA, may be considered Watershed General Programs.
7. Watershed Workgroups may use any method they deem appropriate to conduct votes or develop consensus. However, the following requirements shall apply for any vote to share costs:
  - a. The voting membership of each Watershed Workgroup shall consist of one designated voting representative for each Watershed Copermittee participating in the cost; and
  - b. For a vote to pass, an affirmative vote of all Copermittees participating in the cost is needed.
8. Meetings of any Watershed Workgroup, including any closed sessions with legal counsel, shall be conducted in accordance with the "Brown Act" (Government Code Section 54950 et seq.) as applicable. Except for official meetings of a Watershed Workgroup, nothing herein shall be interpreted to require meetings between staff members of the individual Copermittees (including designated representatives of the Copermittees) to be subject to the Brown Act, where the Brown Act would not otherwise apply.

## V. DISPUTE RESOLUTION

Should a dispute arise among any of the parties regarding any matter related to this MOU, the parties agree to first meet and confer in good faith to attempt to resolve the dispute. If that fails to resolve the dispute, they shall submit the matter to mediation.

## Attachment C

1. **Mandatory Non-binding Mediation.** If a dispute arises out of, or relates to this MOU, or the breach thereof, and if the dispute cannot be settled through normal contract negotiations, the Parties agree to attempt to settle the dispute in an amicable manner, using mediation under the Mediation Rules of the American Arbitration Association [AAA] or any other neutral organization agreed to by the parties. A mediation session is required before having recourse in a court of law. The cost of mediation shall be borne by the parties equally.
2. **Selection of Mediator.** A single Mediator that is acceptable to all Parties shall be used to mediate the dispute. The Mediator may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party.
3. **Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions in the mediation process will be confidential settlement negotiations under Ca. Evidence Code section 1152. The Parties may agree to exchange any information they deem necessary.
  - a. Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present.
  - b. Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be “non-binding” and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

## VI. GENERAL PROVISIONS

### A. Term of Agreement

1. This MOU shall become effective on the date the last party executes the MOU.
2. The life of the MOU shall run through August 2019, or with the life of the current Permit plus twelve months, whichever is longer. For purposes of this paragraph, any permit renewal or replacement after May 2019 shall be considered a new permit; any earlier amendment of the Permit increasing the obligations of the Regional Principal Permittee or a Watershed Lead Permittee may at that Copermittee’s sole option, be declared to be a new permit; and the Management Committee shall determine whether any other earlier amendment to the Permit is of such significance as to effectively be a new Permit.

### B. Withdrawal of Copermittee

1. Participation in this MOU may be withdrawn by any Copermittee for any reason only after the Copermittee complies with all of the following conditions of withdrawal:
  - a. The Copermittee shall notify all of the other Copermittees in writing 90 days prior to its intended date of withdrawal.
  - b. Any expenses associated with withdrawal, including but not limited to, filing and obtaining the withdrawing Copermittee’s individual NPDES permit and the amendment of the Permit will be solely the responsibility of the withdrawing Copermittee.

# Attachment C

- c. The withdrawing Copermittee shall be responsible for their portion of any shared costs incurred according to the conditions of this MOU up to the time that each of the conditions in Section VI.B.1.a. has been met.
- d. Any monies paid by withdrawing Copermittee in excess of the amount due under the terms of the MOU shall be refunded to the Copermittee at the time the withdrawal becomes final as set forth in Section VI.B.1.a.
- e. The withdrawing Copermittee shall not be entitled to participate in the division of proceeds in any reserve fund account when the MOU is dissolved.

## **C. Non-Compliance with MOU Requirements**

- 1. Any participant to this MOU found to be in non-compliance with the conditions of this MOU shall be solely liable for any lawfully assessed penalties resulting from such non-compliance. Failure to comply with MOU conditions within specified or agreed upon timelines shall constitute non-compliance with the MOU.
- 2. Limitations on Use of Funds. Notwithstanding the rights and obligations of the Parties created by this MOU, no Party may be found in breach of this MOU where compliance would require that Party to violate any law or grant assurance, including but not limited to provisions of the Federal Aviation Administration 1999 Policy and Procedure Concerning the Use of Airport Revenue [64 Fed. Reg. 7696, dated Feb. 16, 1999]; the Airport and Airway Improvement Act of 1982 codified at 49 U.S.C. § 47107(b); the Federal Aviation Administration Authorization Act of 1994, P.L. 103-305 (Aug. 23, 1994); the Airport Revenue Protection Act of 1996, Title VIII of the Federal Aviation Administration Act of 1996, P.L. 104-264 (Oct. 9, 1996), 110 Stat. 3269 (Oct. 9, 1996); 49 U.S.C. § 46301(n)(5); and 49 U.S.C. § 47133. The Parties recognize that the Authority has received federal Airport Improvement Project ("AIP") grants containing grant assurance 25, which provides: "All revenues generated by the airport . . . will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport."

## **D. Amendments to the Memorandum of Understanding**

This MOU may be amended only by unanimous consent of all Copermittees. No amendment shall be effective unless it is in writing and signed by the duly authorized representatives of the Copermittees.

## **E. Governing Law**

This MOU shall be governed and construed in accordance with the laws of the State of California. If any provision or provisions shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

The headings used throughout this MOU are for convenience only and do not in any way limit or amplify the terms or provisions of the MOU.

## **F. Consent and Breach Not Waiver**

No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Copermittee to have waived or consented. Any consent by

## Attachment C

any Copermittee to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

### **G. No Indemnification**

1. Each Copermittee shall have the sole responsibility to comply with the Permit.
2. Each Copermittee shall pay all fines, penalties, and costs which may arise out of such Copermittee's non-compliance with the Permit.
3. By entering into this MOU, no Copermittee assumes liability for claims or actions arising out of the performance of any work or actions or omissions, by any other Copermittee, its agents, officers, and employees under this MOU.
4. By entering into this MOU, each Copermittee agrees to defend itself from any claim, action or proceeding arising out of the acts or omissions of itself and retain its own legal counsel, and bear its own defense costs.

### **H. Application of Prior Agreements**

This MOU constitutes the entire Agreement between the parties with respect to the subject matter; all prior agreements, representations, statements, negotiations, and undertakings are superseded hereby.

### **I. Right to Audit**

Each Party retains the right to review and audit, and the reasonable right of access to other Parties' respective premises to review and audit the other Parties' compliance with the provisions of this MOU (Party's Right). The Party's Right includes the right to inspect and photocopy same, and to retain copies, outside of the Parties' premises, of any and all records, including any and all books, records, and documents, related to this MOU with appropriate safeguards, if such retention is deemed necessary by the auditing Party in its sole discretion. This information shall be kept by the auditing Party in the strictest confidence allowed by law.

### **J. Execution of Agreement**

This MOU may be executed in counterpart and the signed counterparts shall constitute a single instrument. In the event that any Copermittee is unable to execute this amendment prior to August 31, 2015, execution of this amendment after that date shall constitute ratification of this amendment, and the MOU and extensions shall be in effect once all signatures are obtained.